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Hearing Date and Time:  
September 24, 2009 at 2:00 p.m. (EST)

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

_____	X	
LEHMAN BROTHERS HOLDINGS INC., <i>et</i>	:	Case No. 08-13555-JMP
<i>al.</i> ,	:	
	:	Chapter 11
Debtor.	:	
_____	:	
KA KIN WONG, <i>et al.</i> , On Behalf of	:	
Themselves and All Others Similarly Situated,	:	
	:	Adversary Proceeding
Plaintiffs,	:	No. 09-01120-JMP
	:	
vs.	:	
	:	
HSBC USA, INC., <i>et al.</i> ,	:	
	:	
Defendants.	:	
_____	X	

PLAINTIFFS' MOTION FOR LEAVE TO FILE SUR-REPLY IN OPPOSITION TO THE  
HSBC DEFENDANTS' MOTIONS TO DISMISS THE CLASS ACTION COMPLAINT,  
ABSTAIN, OR STAY THE ADVERSARY PROCEEDING

Plaintiffs respectfully request leave to file the following sur-reply in opposition to the HSBC Defendants’<sup>1</sup> motions to dismiss the complaint.<sup>2</sup>

**I. HSBC Is Not Permitted to Challenge Plaintiffs’ Standing for the First Time in Its Reply**

The HSBC Defendants filed two motions to the dismiss the complaint in this case. *See* Docket Nos. 13-16, 37-39. Nowhere in these lengthy papers do the HSBC Defendants argue that Plaintiffs lack standing.

Now, however, the HSBC Defendants – for the first time, in their Consolidated Memorandum of Law in Further Support of the Motion of Defendants HSBC USA Inc., HSBC Bank Plc, HSBC Bank (Cayman) Limited, HSBC Holdings Plc, Pacific International Finance Limited, Scott Aitken, Cereita Lawrence, Sarah Craven, Janet Crawshaw, and Sylvia Lewis to Dismiss the Class Action Complaint, Abstain, or Stay the Adversary Proceeding (“Reply”) (Docket No. 72) – argue that Plaintiffs lack standing. *See* Reply at 5. This is improper. While the HSBC Defendants may wish to distract the Court from the failing nature of their initial arguments, they may not do so by raising new arguments in their Reply. *See Ernst Haas Studio, Inc. v. Palm Press, Inc.*, 164 F.3d 110, 112 (2d Cir. 1999) (“new arguments may not be made in a reply brief”) (citing *Knipe v. Skinner*, 999 F.2d 708, 711 (2d Cir. 1993) (citing cases for same proposition)).

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<sup>1</sup> “HSBC Defendants” refers to HSBC USA, Inc., HSBC Holdings plc, HSBC Bank plc, HSBC Bank (Cayman) Limited (f/k/a HSBC Financial Services (Cayman) Ltd.), Pacific International Finance Limited, Scott Aitken, Cereita Lawrence, Sarah Coombs, Janet Crawshaw and Sylvia Lewis.

<sup>2</sup> The decision of whether to consider a sur-reply is a matter within the Court’s discretion. *Kapiti v. Kelly*, No. 07 Civ. 3782 (RMB)(KNF), 2008 U.S. Dist. LEXIS 20135 (S.D.N.Y. Mar. 12, 2008).

## II. Conclusion

Plaintiffs respectfully request this Court issue an order granting Plaintiffs leave to file this sur-reply, and denying the HSBC Defendants' motions in full.

DATED: September 23, 2009

Respectfully submitted,

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s/ RAY A. MANDLEKAR  
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